

### **REMARKS**

Claim 70 has been cancelled. Claims 2-3, 7-9, 11, 13-18, 27-33, 40 and 68-69 remain in the application. Applicant asserts that no new matter has been added. Reconsideration of the Application is hereby requested.

### **Objections to the Claims**

**Claims 7, 27, 69 and 70** were objected to because of certain informalities. In response thereto, Applicant has amended these claims exactly according to the Examiner's suggestions. For this reason, Applicant believes that this objection has been overcome and respectfully requests that it be withdrawn.

### **Claim Rejections**

#### ***Rejections Under 35 U.S.C. § 112***

**Claims 27, 69 and 70** were rejected under 35 U.S.C. § 112, as being indefinite. Applicant has amended claim 69 to recite that the criteria are submitted to the promoter and are submitted by an advertiser. Applicant has also amended Claims 27 and 70 limit the "objective factor" to a number between 0 and 1, pursuant to the examiner's suggestion. For this reason, Applicant believes that this rejection has been overcome and respectfully requests that it be withdrawn.

#### ***Rejections Under 35 U.S.C. § 102***

**Claims 68 and 7** were rejected under 35 U.S.C. § 102(b), as being anticipated by Frengut

et al, US Pub No: 2002/0046099.

Applicant has amended Claim 68 (from which Claim 7 now depends) to include the limitations of: “determining when a user has opted-in to receiving information from the advertiser” and “billing the advertiser, for each user that has opted-in to receiving information from the advertiser, an amount that is determined by subtracting from a predetermined maximum bounty a product of the predetermined maximum bounty times at least one objective factor, the objective factor being a number between 0 and 1, that indicates a quality of the user information.”

Frengut discloses a system in which the fees are calculated simply by determining the number of viewers or the number of sales made as a result of the advertisement. (See, e.g., ¶[0052]) Frengut completely fails to disclose a system in which the advertiser is billed based on a maximum amount that is discounted by a factor that is indicative of the quality of the user information transferred to the advertiser.

For this reason, Applicant believes that this rejection has been overcome and respectfully requests that it be withdrawn.

### ***Rejections Under 35 U.S.C. § 103***

**Claims 9, 27 and 69-70** were rejected under 35 U.S.C. § 103(a), as being unpatentable over Frengut et al. Applicant has amended Claims 27 and 69 to include the limitations of determining when a user has opted-in to receiving information from the advertiser” and “billing the advertiser, for each user that has opted-in to receiving information from the advertiser, an amount that is determined by subtracting from a predetermined maximum bounty a product of the predetermined maximum bounty times at least one objective factor, the objective factor being a number between 0 and 1, that indicates a quality of the user information.”

As discussed above, Frengut teaches a completely different compensation scheme that is

based on a specific number of viewers to advertisement or based on a specific number of sales made through the advertisement. However, in some cases, such as when the user purchases a corresponding product through a retail store, the system disclosed in Frengut would not bill the advertiser at all. In other cases, such as when a user who is unlikely to purchase anything from the advertiser views an ad, the system of Frengut would still bill the advertiser.

The present invention, on the other hand, predicts the likelihood that a user will purchase from the advertiser based on objective criteria and then bills the advertiser according to that prediction. The system recited in the claims bills the advertiser based on the quality of the information sent about the user to the advertiser. Such a quality determination is a predictor of the likelihood that the user will purchase from the advertiser. Thus, the advertiser is billed more when the information provided to the advertiser about the user is more likely to result in a sale than when the information is less likely to result in a sale. Therefore, the present invention has the advantage of billing the advertiser more accurately based on a prediction of the likelihood of a sale being made as a result of the information provided to the user.

For this reason, Applicant believes that this rejection has been overcome and respectfully requests that it be withdrawn.

**Claims 2-3, 17-18 and 32-33** were rejected under 35 U.S.C. § 103(a), as being unpatentable over Frengut et al. in view of French et al US Pat No: 6,282,658.

French does not teach or suggest the limitations added in the claims from which Claims 2-3, 17-18 and 32-33 depend. Therefore, Applicant believes that this rejection has been overcome and respectfully requests that it be withdrawn.

**Claims 13-15 and 28-30** were rejected under 35 U.S.C. § 103(a), as being unpatentable over Frengut et al. in view of Brierley et al, US Pub No: 2002/0161779.

Brierley teaches only the collection of data to provide “selection criteria for a future promotion.” (¶[0079]) Thus, Brierley teaches only to assemble data to decide where to direct

future promotions. It completely fails to use such data in determining how much to bill an advertiser. Thus, the combination of Brierley with Frengut still would not result in the present invention.

For this reason, Applicant believes that this rejection has been overcome and respectfully requests that it be withdrawn.

**Claims 11 and 40** were rejected under 35 U.S.C. § 103(a), as being unpatentable over Frengut et al. in view of Official Notice.

Nothing in the Official Notice would indicate that a combination of the Official Notice with any of the other cited references would teach or suggest the predictive billing system recited in the amended independent claims.

For this reason, Applicant believes that this rejection has been overcome and respectfully requests that it be withdrawn.

**Claims 16 and 3** were rejected under 35 U.S.C. § 103(a), as being unpatentable over Frengut et al. in view of Koningstein US Pub No: 2005/0096979.

Koningstein teaches only selection of a maximum cost per click in a click-based billing system. (See, e.g., ¶[0081]) Nothing in Koningstein would indicate that a combination of the Official Notice with any of the other cited references would teach or suggest the predictive billing system recited in the amended independent claims.

For this reason, Applicant believes that this rejection has been overcome and respectfully requests that it be withdrawn.

### ***Evidence of Secondary Considerations***

“[E]vidence of criticality or unexpected results, commercial success, long-felt but unsolved needs, failure of others, skepticism of experts, etc., must be considered by the examiner in determining the issue of obviousness of claims for patentability under 35 U.S.C. 103.” [MPEP

§ 716.01(a), *see, also, Stratoflex, Inc. v. Aeroquip Corp.*, 713 F2d 1530, 1538 (Fed. Cir. 1983)]

Pursuant to MPEP § 716.01(a), Applicant submits Exhibits A, B, C and D, attached hereto. Exhibit A is a copy of a contract between the New York Times and Applicant, in which the Times agreed to use Applicant's system (which corresponds to the present invention substantially as claimed) in its on-line advertising efforts. This exhibit is submitted to demonstrate the commercial success of the invention.

Exhibit B is a copy of a 2008 article published on "iStockAnalyst," a Web site that provides news and tools to stock analysts and investors (which may be accessed at [www.istockanalyst.com](http://www.istockanalyst.com)). This article indicates that WallStreet Direct, a company that provides financing solutions and consulting services, has selected Applicant's invention as a basis for its opt-in advertising. This article also indicates that Applicant invention is employed by several other financial publishers, including TheStreet.com, The Motley Fool and Hoovers. Again, this exhibit is submitted to demonstrate the commercial success of the invention.

Exhibit C is a 2007 press release that indicates the Investors Business Daily has selected Applicant's invention as its ad serving platform to display opt-in advertising on its Investors.com website. Again, this exhibit is submitted to demonstrate the commercial success of the invention.

Exhibit D is a collection of testimonials from executives of several different companies, including Overstock.com, Wall Street Network, Smart Money and Zacks Advisors. Each of these testimonials indicates enthusiasm on the part of Applicant's customers for the present invention. This exhibit is submitted to demonstrate both the commercial success of the invention, the failure of others and the unexpected results of the present invention.


The above-discussed evidence of secondary considerations is all directed to the present invention and therefore, there is the nexus between the evidence and the invention, pursuant to MPEP § 716.01(b). This evidence is hereby submitted to support the assertion that the present invention is not obvious over the prior art. For this reason also the rejection under §103 should be withdrawn.

**CONCLUSION**

Applicant believes that the rejections have been overcome for the reasons recited above. Therefore, Applicant respectfully requests that all remaining claims be allowed and that a timely Notice of Allowance be issued.

No addition fees are believed due. However, the Commissioner is hereby authorized to charge any additional fees that may be required, including any necessary extensions of time, which are hereby requested, to Deposit Account No. 503535.

02/27/2009  
Date

  
Bryan W. Bockhop  
Registration No. 39,613

**Customer Number: 25854**

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Snellville, GA 30078

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## WEB PUBLISHER SERVICES AGREEMENT

This Web Publisher Services Agreement ("Agreement") is made as of the December 19, 2008 ("Effective Date") between Opt-Intelligence, Inc. ("Opt-Intelligence"), a New York corporation, and the Client named below ("Client"). Capitalized terms not otherwise defined on this Order Form shall have the same meaning ascribed to such terms in the Terms and Conditions attached hereto and incorporated herein.

WHEREAS, Opt-Intelligence is an application service provider, which services (the "Services") include the validation of certain registration data ("Registrant Data") provided to web publisher clients, including Client, by a person visiting, registering or revisiting its website for any reason ("Registrant"), the storage of Registrant Data validated by Opt-Intelligence, the software development of customized placements, the presentation of various advertising offers by various advertisers to Registrants via a placement, and the transfer of Registrant Data to one or more advertisers upon the selection of or opt-in to such offer(s) by a Registrant;

WHEREAS, Client desires to use the Services and Opt-Intelligence desires to provide the Services in accordance with the terms and conditions contained herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, THE PARTIES AGREE TO THE TERMS SET FORTH BELOW AND THE TERMS AND CONDITIONS ATTACHED HERETO:

## ORDER FORM

WEB PUBLISHER DETAILS - New Client			
<b>Web Publisher Name:</b>	THE NEW YORK TIMES (NYTimes)		
<b>Business Development Representative:</b>	Brian Ernst	<b>Telephone:</b>	(212) 556-2618
<b>Address:</b>	620 Eighth Avenue, 8th Floor New York, NY 10018-1405	<b>Email:</b>	ernstbr@nytimes.com
		<b>Fax:</b>	_____
<b>Billing Contact Revenue</b>	Ewoma Jones 620 Eighth Avenue, 8th Floor 18 <sup>th</sup> Floor New York, NY 10018-1405  For payment of revenue Lock Box Information New York Times Digital W4855 PO Box 7777 Philadelphia, PA 19175-482	<b>Billing Phone</b>	(212) 556-2057
		<b>Billing Email:</b>	jonesew@nytimes.com
<b>Billing Contact Expense</b>	Kathleen Smyth The New York Times Company Shared Services Center Accounts Payable Dept 101 W. Main Street, Ste. 2000 Norfolk, VA 23510	<b>Billing Phone</b>	(757)-628-1972
		<b>Billing Email:</b>	kathleensmyth@nytsse.com
<b>Production Contact</b>	Mike Foley	<b>Production Phone:</b>	(212) 556-2620
		<b>Production Email:</b>	foleymk@nytimes.com

OPT-INTELLIGENCE DETAILS			
<b>Account Representative:</b>	Rob Massa	<b>Telephone:</b>	(917) 591-4049
<b>Address:</b>	45 West 25 <sup>th</sup> Street, 4 <sup>th</sup> Floor New York, NY 10010	<b>Fax:</b>	(646) 304-2897
		<b>Email Address:</b>	rmassa@opt-intelligence.com

PLACEMENT DETAILS	
<b>Term of Agreement:</b>	1 Year

<b>Implementation Type:</b>	Integrated JavaScript (SDA)
<b>Initial Number of Placements:</b>	1
<b>Registrant Data Passed before Offer Served:</b>	TBD
<b>Number of Max Offers Per Placement:</b>	4
<b>Net Offer Revenue % Placement:</b>	75% to NYTimes for either Opt-Intelligence sold or NYTimes sold advertisers. Adjustments to net offer revenue will not be greater than 10%.
<b>Development Fee:</b>	\$0.00
<b>Client Website(s):</b>	www.nytimes.com, and such other sites as the Client may name from time to time.
<b>Special Instructions:</b>	30 day termination for convenience. Additionally, the default for opt-in check box will always be unchecked
<b>Payment Terms:</b> Opt-Intelligence shall pay the applicable amounts owed to Client within forty-five (45) days after the end of each calendar month beginning after the calendar month in which the Live Date occurs. All payments will be paid in United States' dollars. Payment will be based on Net Offer revenue earned by Opt-Intelligence from the actions of Client Consumers with the Opt-Intelligence product, as reported by Opt-Intelligence, and without regard to Opt-Intelligence actual collection of such earned revenue from Advertisers. Opt-Intelligence shall furnish Client a statement together with payment for any amount shown thereby to be due to Client. Adjustments to net offer revenue will not exceed 10%.	

**IN WITNESS WHEREOF,** Opt-Intelligence and Client have each caused this Agreement to be executed by their duly authorized representatives, effective as of the day and year first written above.

**OPT-INTELLIGENCE:**

Opt-Intelligence, Inc.

Signature of Account Representative

Rob Massa

Name of Account Representative

Signature of Sales Manager

Rob Massa

Name of Sales Manager

**CLIENT:**

NY Times

Signature of authorized representative

Vice President, Strategy & Operations  
Title of authorized representative

Eliot Pierce

Name of authorized representative



**EXHIBIT B**

## WallStreet Direct Partners With Opt-Intelligence

Tuesday, September 16, 2008 1:57 PM

**Symbols:** [TSCM](#)

(Source: Datamonitor) WallStreet Direct, a wholly-owned subsidiary of Financial Media Group and a provider of financing solutions and consulting services, has partnered with Opt-Intelligence, a provider of opt-in consumer advertising, to provide co-registration advertising to its members.

WallSt.net is a multi-purpose financial web site that offers news, social networking applications, a rewards program, stock quotes and premium subscription services. Registered users of WallSt.net will now have the ability to explicitly opt-in to receive targeted advertising offers from the hundreds of marketers for which Opt-Intelligence generates leads.

According to WallStreet Direct, as consumers register at WallSt.net, they will be served opt-in advertising offers by Opt-Intelligence. The ads, which are served seamlessly within the website's user experience, are selected from a pool of advertisers in the Opt-Intelligence network based on a combination of demographic criteria pre-defined by the advertiser and the individual profile of the registered user. Users may opt-in to explicitly request that their information be shared with one or more specific advertisers.

In addition to WallSt.net, Opt-Intelligence has partnerships with other well-known financial publishers including TheStreet.com, The Motley Fool, Hoovers, Zacks, and Investor's Business Daily.

Nick Iyer, president of WallStreet Direct, said: "Having Opt-Intelligence handle opt-in advertising for us is the best way to monetize our user registrations. Their technology was built with the consumer in mind, it safeguards user privacy and delivers useful information from some of the nation's most respected marketers."

Daniel Felter, CEO of Opt-Intelligence, said: "We welcome a premier financial publisher like WallSt.net to the world of opt-in advertising. This form of online lead generation has the ability to generate more revenue than any other form of advertising from an eCPM basis, without disrupting the core purpose of any site."

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No Comments

# OPT-INTELLIGENCE

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## PRESS RELEASE

Source: Opt-Intelligence, Inc.

### **Investors Business Daily® selects Opt-Intelligence to power opt-in ad serving on its website**

New York, NY -- (PR Newswire) – May 20, 2007 – Investor's Business Daily® has selected Opt-Intelligence's proprietary ad serving platform to display opt-in advertising on its Investors.com website.

## HOW IT WORKS

During the investors.com registration processes for free and paid services, visitors are given the opportunity to opt-in to vertically targeted advertisements. Ads are targeted, in real-time, to each visitor by a number of demographic, geographic and behavioral metrics and are served seamlessly into the investors.com site via JavaScript. By opting-in to a specific advertiser's ad, the visitor is explicitly requesting that their information be shared with the selected advertiser so that they can be contacted directly. After viewing the ads, whether the visitor opts-in to an ad or not, they simply continue with the registration process as they normally would. The user never leaves the website.

"We did a lot of research prior to making the decision to offer opt-in advertising on our website," said Harlan Ratzky, CEO of Investors.com. "Our goals were 1) to keep a very positive user experience, 2) to maintain compliance with our strict privacy policy, 3) to provide our advertisers with the flexibility they require and 4) to achieve a very aggressive eCPM target. After extensive testing, it became clear to us that only the Opt-Intelligence technology and approach could allow us to accomplish all four goals."

Daniel Felter, CEO of Opt-Intelligence, said "IBD's decision to use our ad serving solution shows their commitment to preserving their high quality user experience and keeping their users' privacy a top priority. We are very excited to be part of their overall investors.com monetization strategy and to be involved with such a top notch organization"

## ABOUT INVESTOR'S BUSINESS DAILY®

Investor's Business Daily, its digital edition eIBD™ and the award-winning companion Web site, Investors.com are recognized worldwide for empowering individual and professional investors with cutting-edge research, stock screens and ratings that can't be found anywhere else. Through unique proprietary screening criteria backed up by decades of market research, IBD highlights stock winners and major market turns as they emerge. Some of the most widely used screens include the IBD 100 list of top-performing companies, The 85-85 Index, The New America Index and Screen of the Day, all of which have outperformed the market. Founded in 1984 by leading investor William J. O'Neil, IBD has redefined the way news and financial data are presented. Investors.com, named one of the Forbes "Best of the Web," provides a suite of equally powerful tools and screens for identifying market stars. Both eIBD and Investors.com are available worldwide. In addition, IBD hosts popular investment workshops based on the CAN SLIM®

investing system, which has outperformed major market indexes. \* IBD's market writers can be heard teaching the same principles on national television and radio.

\*The American Association of Individual Investors' independent "real time" study found that IBD's CAN SLIM investing system had a 949.9% gain over past eight ½ years, compared to S&P 500 gain of 30.9% (1998 through June 30, 2006).

#### ABOUT OPT-INTELLIGENCE

Founded in 2003, Opt-Intelligence Inc. ([www.opt-intelligence.com](http://www.opt-intelligence.com)), runs a leading opt-in advertising network supported by Opt-Intelligence's proprietary technology. Opt-In advertising can be used for lead generation and direct response marketing. Publishers making up the network include Orbitz.com, Ediets.com and VivaMiGente.com. Advertisers using the network to generate opt-in leads include Circuit City, eBay, Nokia and Procter & Gamble. Opt-intelligence offers a variety of opt-in advertising placements, including co-registration, inter-registration, log-in, IAB banner and video.

**EXHIBIT D**




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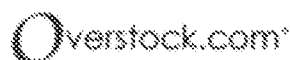
# CLIENTS

[Careers](#)

# TESTIMONIALS

Founded in 2003, Opt-Intelligence operates the leading, global, opt-in advertising marketplace and network built on its own proprietary Clear-Request™ technology. There are solutions for advertisers and publishers of all sizes and many different opt-in ad placement options including, co-registration, post-registration, banner and video overlay. To see how it works, take a look at the demos.

Publishers in the Opt-Intelligence network include best-of-breed companies such as Orbitz, TheStreet.com, Cheaptickets.com, current advertising partners using the network range from small businesses to Fortune 500 companies including Circuit City, eBay, Nokia, Overstock, Proctor & Gamble and Hewlett Packard, amongst others.

[Client Overview](#)
[Testimonials](#)
[Case Studies](#)


"Opt-Intelligence is truly a leader in today's evolving, opt-in lead generation marketplace. Their high standards and hosted network protect us from the abuse that is rampant among many other lead generation providers. The quality of the opt-ins they generate for us are second to none."

*Jacob Hawkins, Director of Online Marketing*



Wall St. Network

"Having Opt-Intelligence handle opt-in advertising for us is the best way to monetize our user registrations. Their technology was built with the consumer in mind, it safeguards user privacy and delivers useful information from some of the nation's most respected marketers."

*Nick Iyer, President*



"In an online marketing world where the highest amount of success is to test, test, and test again -- Leadserv is an incredible

tool to use."

*Roxy Rosen, LTR Media*



"The LeadServe system is great. It's easy to setup and you start generating leads immediately."

*Brian Rice, Red Clay Media*



"Opt-Intelligence has the most sophisticated opt-in ad serving platform in the industry. Their technology maximizes the revenue to us and their stable of advertisers is full of great brand names. One reason we chose them is that they provide the best consumer experience and can work within the constraints of our strict privacy policy."

*Michael Ledu, General Manager of SmartMoney.com*



"Zacks has always prided itself with staying ahead of the curve with our technology. When it came to lead generation technology we realized that in order to maintain a leadership position in quality financial leads, we needed to outsource. Once the decision was made, it became very clear very fast who had the best technology to fit our stringent needs. Opt-Intelligence technology is not only cutting edge, easy to use, and extremely flexible, but the customer service they have offered to make this transition as easy as possible for us and our entire network of sites has been top of the line."

*Evan Rullman, EVP of Zacks Investor Reach Advertising Network*

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